

# REMARKS

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## I. Changes in the Specification and Abstract

The amendment dated March 23, 2006 was objected to because it added new matter by means of the paragraphs added between lines 25 and 27 of page 1 and the changes in the paragraph describing fig. 7 on page 4 of the specification.

New claims 24 to 33 claim an air nozzle attachment, not the hair dryer, and are similar to the originally filed claims in their form and wording so that new matter is not introduced via the new claims. New independent claim 24 contains the features and limitations of the English translations of the original claims 1 and 2 of the PCT International application. New independent claim 34 claims a hair dryer and a first and second air nozzle attachment 8, 23. Claim 34 is based on canceled claim 12.

Changes have been made in the paragraphs added between lines 25 and 27 of page 1 and the paragraph describing fig. 7 on page 4 to eliminate the new matter. However the originally filed specification does provide a basis for a detachable air nozzle attachment 8 for generating a hot-air stream and a cold-air stream and this feature remains in the above specification paragraphs. Page 3, fourth full paragraph, of the originally filed specification provides the basis for this feature.

The specification also provides basis for the feature that the air nozzle attachment 8 is axially connectable in the vicinity of the blower opening 7 so that it can be rotated to any angular position. This latter feature remains in the above specification paragraphs. The basis is provided on page 3, third full paragraph, of the

originally filed specification. Basis for this feature is also provided by the English translation of claim 7, which was filed with the original application papers.

Since the specification only discloses the details of one preferred embodiment of the air nozzle attachment that produces the two air streams, it thus provides basis for stating that the axially rotatably connectable air nozzle attachment 8 is releasable or detachable. See paragraphs 3 and 4 on page 3 of the specification.

The last paragraph on page 3 provides the basis for the limitation that the hot and cold air nozzles have different visual appearances, but this feature appears in the original English translation of claim 10.

The exchangeability of air nozzle attachment 23 and air nozzle attachment 8 is no longer described in the added specification paragraphs between lines 25 and 27 on page 1.

The description of fig. 7 in the paragraph on page 4 has been amended to eliminate the new matter. It has been restored to almost its original state in the originally filed specification with some exceptions.

First, because the changes in the drawing figures were approved and new drawing reference numbers "33" and "35" were added to fig. 7 (which is not new matter because the indicated elements were present in the originally filed drawing figures) some wording referring to these elements was added to this paragraph. Of course the drawing figure 7 could be restored to its original state if it is absolutely necessary by deletion of these added reference numbers.

Second, a translation error was corrected in lines 3 to 4 of the paragraph on page 4. The words "selective dampening" in lines 3 to 4 are an incorrect translation of

the German wording, "wahlweisen Benutzung", in line 15 of page 3 of the German disclosure. According to the on-line Leo German-English dictionary a better English translation is: optional use or usage. A new certified English translation of the International specification can be provided if it is absolutely necessary. Although another certified English translation could be filed, it is respectfully submitted that this translation error would be obvious to one of ordinary skill in the art, because (1) it would be obvious that a hot-air stream from a hair dryer would have a drying effect, not a moistening or dampening effect, and (2) it would be obvious that the only reason for describing another air nozzle attachment would be that it is intended for use with the hair dryer.

In view of the changes in the added paragraphs withdrawal of the objection to the added paragraphs for adding new matter is respectfully requested.

A new abstract of the disclosure has been provided above, which is believed to eliminate the features that are "new matter".

## **II. Rejection for Failing to Comply with the Written Description Requirement**

Claims 17 and 19 to 23 were rejected under 35 U.S.C. 112, first paragraph, for containing subject matter that was not described in the originally filed specification.

Claims 22 to 23 including the subject matter regarding the second air nozzle attachment 23 have been canceled. These claims included the disputed terminology "means for blocking a cold air flow" which is not included in any of the new claims.

None of the new claims include new matter, especially regarding the

exchangeability of the air nozzle attachments 8 and 23.

However the rotatability and detachability features of the air nozzle attachment 8 are clearly present in the original disclosure, especially in claims 7 and claim 8. Claim 7 clearly states that the attachment is "axially rotatably connectable", which is explained in more detail in lines 12 to 17 of page 3 of the English translation of the specification. At that point the specification states that the air nozzle attachment can be positioned "in any angular position" during treatment with the hair dryer 2, because it is axially rotatably connectable. Claim 8 states that the snap-on connection is one, which can permit detachment again. The fourth paragraph on page 3 of the English translation of the specification also supports this interpretation.

Claim 34 corresponds to claim 12, which has been canceled, and claims a hair dryer with the air nozzle attachment 8 and the air nozzle attachment 23. In order to avoid dependence on new claim 24, the features of new claim 24 have been included in claim 34; otherwise claim 34 would not limit claim 24, which is not permitted.

Claim 12 also included the incorrectly translated wording "selective dampening". The new claim 34 does not use this incorrect wording, but instead uses the correct wording "optional usage". Although another certified English translation could be filed, it is respectfully submitted that this translation error would be obvious to one of ordinary skill in the art, because (1) it would be obvious that a hot-air stream from a hair dryer would have a drying effect, not a moistening or dampening effect, and (2) it would be obvious that the only reason for describing another air nozzle attachment would be that it is intended for use with the hair dryer.

New claims 32 and 34 regarding visually distinguishing the cold-air nozzle 14

from the hot-air nozzle 13 contain the subject matter of claims 16 and 17. Claim 17 was objected to on page 5 of the Office Action for containing "new matter". However the new claims 32 and 34 have been carefully drafted to refer to the outer parts of these nozzles and are fully supported by the original claims 10 and 11 of the English translation of the PCT application. Thus claims 32 and 34 do not include any new matter.

Claims 26 and 27 contain the subject matter of claims 19 and 20, which were objected to on page 5 of the Office Action for containing "new matter". Claims 26 and 27 have exactly the same wording as canceled claims 4 and 5. Furthermore page 3, lines 1 to 10, of the specification fully support the features of claims 26 and 27.

Claim 28 corresponds to claim 21 but uses the same wording as the original claim 6. This latter wording is fully supported by the original disclosure at page 3, lines 8 and 9, of the English translation of the specification. However the term "cotermminus" means that both parts end at the same point, which is the meaning of the wording "end at the same length".

For the foregoing reasons it is respectfully submitted that new claims 24 to 34, which are substantially the same as English translations of the corresponding EP application that have been adjusted to US Patent Office Rules, are fully supported by the originally filed disclosure and that these new claims should not be rejected for failing to comply with the written description requirement according to 35 U.S.C. 112, first paragraph.

### **III. Obviousness Rejections**

#### **1. FR '334**

Claims 13 to 23 were rejected as obvious under 35 U.S.C. 103 (a) over FR 1,387,334, in view of Mauer, et al (US '789).

This FR '334 does disclose a hair dryer that simultaneously generates a central hot-air stream and a concentric cold-air stream as shown in figure 1 and see fifth paragraph, left side, page 1.

FR '334 does not disclose or suggest any air nozzle attachment, like applicants' attachment 8 of new claim 24. In fact, FR '334 only discloses the structure of the hair dryer 2, which does produce concentric hot and cold air streams 5, 6. Thus most of the features provided by the air nozzle attachment claimed in new claim 24 are not part of the hair dryer of FR '334. For example, FR '334 does not disclose that the hot-air stream and cold-air stream that it produces are side-by-side as claimed in claim 24. FR '334 discloses a hair dryer that produces a cylindrical hot-air stream and a cold-air stream that is concentric to the hot-air stream. Concentric streams are not side-by-side, according to the definition of "side by side".

New claim 24 only claims an air nozzle attachment, which is neither disclosed nor suggested in the FR reference.

US '789 (Mauer) does disclose an attached part 23 – 30 that produces side-by-side fluid streams, however in contrast to the statement in line 1, page 6 of the Office Action, they are not flat. Figure 3 of US '789 shows the cross-section of the attached part 23 – 30, which clearly shows that the two streams would each have a circular cross-section since the outlets for the streams are circular. Also the two

nozzles do not appear to be exactly side-by-side as shown in fig. 4, but the water nozzle is behind the air nozzle. In addition, the attached part 23 to 30 does not have a central conduit entrance 11 and a coaxial conduit entrance 12 coaxial to it into which the input streams flow, as claimed in claim 24. The central water flow is conducted laterally into the part 23 to 30 by laterally displacing a tube containing the flow so that the entrance for the air in part 23 to 30 is not coaxial to it. The attached part 23 – 30 is not a means for converting a central flow stream and a coaxial flow stream that is coaxial to the central flow stream into side-by-side flat streams as alleged in the Office Action. Instead the side-by-side streams, which are circular in cross-section, have already been produced prior to entry into the attached part 23 – 30 by displacing the water tube 20 as shown in fig. 2 of the reference laterally in the air tube 19.

Furthermore the apparatus of Maurer according to claim 1 and the description in column 2 is clearly limited to an air tube for conducting air and a water tube for conducting water. The attached part 23 to 30 is not adapted to producing a hot-air stream and a cold-air stream that are side-by-side from a hot-air stream and a cold air stream that are concentric. If a hot-air stream were fed through the central tube instead of water it would cool prior to reaching the tip.

Thus Maurer does not disclose or suggest all the features and limitations of claim 24 that are absent from FR '334, which does not disclose any attachment for the hair dryer 2.

It is well established that all the claim limitations must be taught or suggested for a valid prior art reference under 35 U.S.C. 103 (a). See M.P.E.P. 2143.03. Clearly

Mauer does not suggest all the features of the new claim 24 that are absent from the FR '334.

Furthermore with respect to claim 25 the attached part of Mauer does not disclose or suggest an attachment with two flat nozzles that produce two flat air streams. Figure 3 of Mauer clearly shows that the nozzles in the attached part have a circular cross-section at their tip.

With respect to claim 30 Mauer does not disclose or suggest the releasable or detachable snap-on coupling. With respect to claim 33 there is no disclosure in Mauer that the outer parts of the nozzles are colored differently and with respect to claim 34 there is no disclosure of an alternate nozzle attachment for only delivering a single hot-air stream.

Finally it is respectfully submitted that one skilled in the art would not combine Mauer with the FR reference because Mauer discloses apparatus that is used in the field of dental surgery while the FR reference and the present application describe the structure of hair dryers and attachments for hair dryers used for cosmetic applications. These are entirely different fields of art.

Mauer is non-analogous art, which cannot be combined with the FR reference, because it fails the test for analogous art. The test for art in a different field is that it can only be combined with another reference under 35 U.S.C. 103 (a) if it is reasonably pertinent to the problem that the applicants are trying to solve. See M.P.E.P. 2141.01 (a). The problem that the applicants are trying to solve is explained on page 1 of the applicants' specification. The two-stream hair dryer was originally invented because professional hairstylists use a hair dryer to heat and shape the hair



into a hairstyle during certain treatments and during the treatments the nozzle of the hair dryer sometimes comes into contact or rests on the head. The hot outer nozzle of a hair dryer that is not structured like the hair dryer 2 with an outer concentric cold-air stream and an inner hot-air stream can burn the scalp skin if it rests on the scalp during treatment. The structure of the hair dryer 2 without the attachment 8 prevents this sort of burning of the scalp skin because the outer concentric cold air flow cools the outer surface of the tip of the hair dryer, but this structure produces an additional problem, namely that the hair is cooled too much by the concentric cold air stream so that it is more difficult to effectively perform the desired styling (page 1, lines 9 to 16, of applicants' specification). The applicants' attachment 8 claimed in claims 24 to 34 helps to overcome this deficiency of the prior art hair dryer 2 and of course the hair dryer of FR '334.

However there is no disclosure in Mauer that is relevant to this particular problem. The structure of attached part 23 to 30 is entirely different from the structure of the attachment 8 shown in the applicants' figures and claimed in claim 24. There is no discussion of applicants' problem or a similar problem in prior art that is improved by Mauer. The many structural differences of the attached part of Mauer from the air nozzle attachment of the present invention are noted above.

For the foregoing reasons it is respectfully submitted that new claims 24 to 34 should not be rejected under 35 U.S.C. 103 (a) over FR 1,387,334, in view of Mauer, et al (US '789).

## **2. Zenz (German Patent 9001119)**

Claims 13 to 23 were rejected under 35 U.S.C. 103 (a) as obvious over Zenz

(German Patent 9001119), in view of Mauer, et al (US '789).

Zenz like FR '334 does disclose a hair dryer that simultaneously generates a central hot-air stream and a concentric cold-air stream as shown in figure 1 and see fifth paragraph, left side, page 1. However Zenz does not disclose or suggest any air nozzle attachment, like applicants' attachment 8 of new claim 24. In fact, Zenz only discloses the structure of the hair dryer 2, which does produce concentric hot and cold air streams 5, 6.

New claim 24 only claims an air nozzle attachment, which is neither disclosed nor suggested by Zenz.

The arguments against combining Mauer with the Zenz reference are thus the same as give above for the FR reference. All the arguments with respect to Mauer and the FR reference are thus incorporated here by reference from the above section.

With respect to claim 24 Mauer does disclose an attached part 23 – 30 that produces two fluid streams, however in contrast to the statement in line 1, page 6 of the Office Action, they are not flat and further they do not appear to be exactly side-by-side. Figure 3 shows the cross-section of the attached part 23 – 30, which clearly shows that the two streams would each have a circular cross-section since the outlets for the streams are circular. Also the two nozzles do not appear to be side-by-side as shown in fig. 4, but the water nozzle is behind the air nozzle. In addition, the attached part 23 to 30 does not have a central conduit entrance 11 and a coaxial conduit entrance 12 coaxial to it into which the input streams flow, as claimed in claim 24. The central water flow is conducted laterally into the part 23 to 30 by laterally

displacing a tube containing the flow so that the entrance for the air in part 23 to 30 is not coaxial to it. The attached part 23 – 30 is not a means for converting a central flow stream and a coaxial flow stream that is coaxial to the central flow stream into side-by-side flat streams as alleged in the Office Action. Instead the side-by-side streams, which are circular in cross-section, have already been produced prior to entry into the attached part 23 – 30 by displacing the water tube 20 as shown in fig. 2 of the reference laterally in the air tube 19.

Thus Mauer does not disclose or suggest all the features and limitations of air nozzle attachment 8 of claim 24 and should not be combined with Zenz which only teaches the structure of the hair dryer without the attachment to reject claim 24.

Furthermore as noted above Mauer is clearly non-analogous art that should not be combined with Zenz for any reason since it is not reasonably pertinent to the inventor's problem.

For the foregoing reasons it is respectfully submitted that new claims 24 to 34 should not be rejected under 35 U.S.C. 103 (a) over Zenz (German Patent 9001119), in view of Mauer, et al (US '789).

### **3. EP 0 970 633 A1**

Claims 13 to 23 were rejected under 35 U.S.C. 103 (a) as obvious over Guenin (EP 0 970 633 A1), in view of Mauer, et al (US '789).

EP '633 does disclose a hair dryer 1 with a fan 5 and a heater 12. It does produce a hot-air stream 9 and a cold-air stream 11. It does have a detachable air nozzle attachment 23 with "orifices" (equivalent to applicants' flat nozzles) 22, 26, as shown in figs. 1 and 2 of the EP reference. See paragraph 0049 of EP '633.

However the hair dryer of EP '633 has significant structural differences from the device claimed in applicants' claims 24 to 34. First, with respect to claim 24, claim 24 claims a device including means for generating a central hot-air stream 5 and a concentric cold-air stream 6 as shown in applicants' figs. 1 and 3. The term "concentric" means that the flows have a common center (see Webster & Merriam online Internet dictionary, for example). A study of fig. 2 of EP '633 however shows that the corresponding hot-air flow 9 and cold-air flow 11 of the device of the EP reference do not have a common center. That means that the cold-air flow is not concentric and the device disclosed in EP '633 does not have means for producing a concentric cold-air flow.

However this is a deficiency in the hair dryer of EP '633 for the hairstyling application, because the hair dryer 2 shown in applicants' figure 1 differs in its structure from that shown in fig. 2 of EP '633, because the entire outer surface of the outlet end of the applicants' hair dryer 2 is cooled by the concentric cold-air stream, while one side of the hair dryer shown in EP '633 remains comparatively hotter because the hot-air flow through duct 8 is inclined toward the side as shown in fig. 2 of EP '633. Thus that hotter side could burn the individual that is treated during the hairstyling.

In addition, there are other differences between the hair dryer of Guenin and the applicants' hair dryer. For example, Guenin does not disclose or suggest a detachable hair nozzle attachment with flat hot and cold air streams side-by-side.

Furthermore EP '633 does not disclose or suggest an air nozzle attachment with a coaxial conduit entrance for the cold-air stream as claimed in applicants' new

claim 24. The reason of course is because the conduit 8 is inclined to the central axis of the hair dryer and thus the opening at the entrance to the attachment for cold air is displaced laterally to one side of the air nozzle attachment 8 while the opening for the hot air is on the other side of the air nozzle attachment 8.

Mauer does not suggest changing the structure of the attachment of EP '633 so that there is a central conduit entrance for hot air and a coaxial conduit entrance coaxial to the central conduit entrance for the cold air. Thus Mauer does not suggest the modifications of Guenin that are necessary to provide this feature in their combined subject matter.

All the previous arguments with respect to Mauer apply here.

Furthermore it is especially important to remember that the statute (35 U.S.C. 103) requires that the source of the suggestion cannot be the applicants' specification. For example, the Federal Circuit Court of Appeals has said:

"As in all determinations under 35 U.S.C. 103, the decision-maker must bring judgment to bear. It is impermissible, however, simply to engage in a hindsight reconstruction of the claimed invention, using the applicant's structure as a template and selected elements from references to fill the gaps". *In re Gorman*, 18 U.S.P.Q.2d 1885 (Fed. Cir. 1991).

There is no hint or suggestion to select various features from the devices for hair dryers disclosed in the four references to arrive at the invention claimed in new claim 24 to solve the problem described in the applicants' background section.

For the foregoing reasons it is respectfully submitted that new claims 24 to 34 should not be rejected under 35 U.S.C. 103 (a) over Guenin (EP 0 970 633 A1), in view of Mauer, et al (US '789).

Should the Examiner require or consider it advisable that the specification, claims and/or drawing be further amended or corrected in formal respects to put this case in condition for final allowance, then it is requested that such amendments or corrections be carried out by Examiner's Amendment and the case passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing the case to allowance, he or she is invited to telephone the undersigned at 1-631-549 4700.

In view of the foregoing, favorable allowance is respectfully solicited.

Respectfully submitted,



Michael J. Striker,  
Attorney for the Applicants  
Reg. No. 27,233